

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT, TWIN RIVERS UNIFIED
SCHOOL DISTRICT, SACRAMENTO
COUNTY MENTAL HEALTH,
SACRAMENTO COUNTY PROBATION
DEPARTMENT, SACRAMENTO
COUNTY OFFICE OF EDUCATION,
CALIFORNIA DEPARTMENT OF
MENTAL HEALTH, AND CALIFORNIA
DEPARTMENT OF EDUCATION.

OAH CASE NO. 2009050043

ORDER GRANTING SACRAMENTO
COUNTY PROBATION
DEPARTMENT'S MOTION TO
DISMISS AS A PARTY

On April 28, 2009, attorney Christian Knox filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) on behalf of Student naming the above parties, include the Sacramento County Probation Department (SCPD).

On May 11, 2009, attorney Rick Heyer filed on behalf of SCPD a motion to dismiss SCPD as a party. On May 26, 2009, OAH received Student's opposition.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

20 United States Code section 1415(k)(6)(A) provides that the Individuals with Disabilities Education Act does not "prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability."

Welfare and Institutions Code section 727, subdivision (a), provides that a juvenile court has the authority:

[t]o facilitate coordination and cooperation among governmental agencies, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to the minor. However, no governmental agency shall be joined as a party in a juvenile court proceeding in which a minor has been ordered committed to the Department of the Youth Authority. In any proceeding in which an agency is joined, the court shall not impose duties upon the agency beyond those mandated by law. Nothing in this section shall prohibit agencies which have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the minor.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the minor is eligible for those services.

DISCUSSION

In her complaint, Student asserts that SCPD denied her a free appropriate public education because SCPD had care, control and custody over Student and failed to ensure that her educational and mental health needs were properly addressed. Specifically, Student alleges that SCPD placed her in residential facilities that did not meet her unique needs, failed to attend individualized educational program meetings and did not have a responsible person appointed to hold Student's educational rights. SCPD contends in its motion to dismiss that it is not an appropriate party to this action because it is not a public agency as defined by the federal and California special education laws since SCPD functions as an arm of the juvenile court.

In the present matter, Student and SCPD agree that on August 13, 2006, the Sacramento County Juvenile Court (Juvenile Court) declared Student a ward of the court pursuant to Welfare and Institutions Code section 602. Student was receiving special education services when she was declared a ward of the court. Pursuant to the Juvenile Court's order, Student was not placed with her parent. Instead, the Juvenile Court granted SCPD care, control and custody over Student's placement.

SCPD's decisions where to place Student were done pursuant to the authority granted by the Juvenile Court. Additionally, the decision whether and how to appoint a responsible adult to make educational decisions for Student is the responsibility of the Juvenile Court. (Welf. & Inst. Code, § 726, subd. (b).) Because SCPD's actions were done pursuant to the authority granted to it by the Juvenile Court, SCPD is not a public agency subject to OAH's

authority under federal or California special education laws. Therefore, SCPD is dismissed as a party to this action.

ORDER

SCPD's Motion to Dismiss it as party is granted. The matter will proceed as scheduled against the remaining parties.

Dated: June 2, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings